BRIEF SUPPORTING PETITION FOR WRIT.

Accompanying the petition for writ and this brief are the printed brief of petitioners filed in the State Court of Appeal, marked "Exhibit A," and the printed brief of petitioners filed in the Supreme Court of Louisiana in support of their application to that Court for writ of certiorari, marked "Exhibit B."

In giving the page where certain testimony will be found in the record, "Exhibit A," uses the abbreviation, "Tr." before the figures showing the number of page. The Clerk of the Court of Appeal in making up certified copy of the record in these cases, at request of plaintiffs, preserved that "Tr." in the testimony of the witnesses, first at top of page giving the consecutive number of page of his record and just under same placing the "Tr:" number. The copy of testimony of witnesses in the transcript begins with folio 76 and "Tr. 74" and continues to folio 385, "Tr. 382."

If this record is printed and this designation of "Tr." is preserved at beginning of each page of the testimony, it will be easy for the Court in referring to "Exhibt A," to locate any page referred to therein. The application for writ in these cases being made in *forma pauperis*, the correct number of the page of printed record could not be inserted in this brief or the petition for the writ.

In these cases of Barton v. Phelan Co. and Pace v. Same, 200 So. Rep. 508, the decree of judgment upon very little consideration of this Honorable Court will

reveal it is no more than the arbitrary edict of the Court of Appeal of the First Circuit of Louisiana. It will reveal that the said decree seeks to determine nothing, but that the said decision does avoid all mention or discussion of the issue of negligence and the testimony of the five eye witnesses to the collision and all other important testimony or vital issues.

We doubt that any decision of any court of record in the United States can compare with this decision in passing over and failing to mention or discuss the vital testimony of witnesses and the issues of law.

The so-called physical fact seized upon by the Court of Appeal as being conclusive on the issues of fact, and its effort to make it appear that the trial Court's decision on a question of fact could not be reversed unless found to be manifestly erroneous, are manifestly unsound and not supported by facts or law. Only a presumption of the correctness of the opinion of the trial Court on a question of fact obtains when it weighs the testimony of witnesses it observed when testifying.

In these cases the trial Court expressly declared that "the Court is compelled to say in the main it must be totally disregarded." This disregard referred to the testimony.

That Court under the laws and jurisprudence of the State of Louisiana had no authority to disregard the said testimony under the guise of its being contradictory.

Fridge v. Talbot, et al., 180 La. 937, 948.
Webb v. Lambert, 128 So. Rep. (La. App.) 317.

Article 7, Section 7, Const. of Louisiana.
Article 539 of the Code of Practice of Louisiana.

The physical fact that the long heavy truck of defendant skidded from its north side of the highway over to the south side at the scene, was not sufficient to show that the collision occurred on the north side. The testimony of four eye witnesses to the contrary, supported by other strong physical facts should have been considered and accepted.

Western & A. R. v. Henderson, 279 U. S. 639, 49 Supreme Court 445.
Mc Michael v. Illinois Cent R. Co., 110 La. 18, 19.

The mere fact that the collision may have occurred on the north side of said highway, through Barton car dodging or striking the cow skidding over there, does not show that Barton was negligent nor dispense with consideration of the evidence. Unless it be shown Barton did something in that emergency others would not usually do, Barton should recover under the emergency rule of law in Louisiana; and plaintiff Pace should recover because he is not responsible for anything done by Barton, also upon the emergency rule.

Stout v. Nehi Bottling Co., 146 So. 857.
Logrand v. Dugan, 196 So. 564.
Morgan v. Lanz, 195 So. 128.
Rogers v. Silver Fleet, 180 So. 185.

Improvements on legal procedure will not tend to cause better or fairer decisions of Courts. The prohitions in the Fourteenth Amendment of the Federal Constitution as to due process and equal protection of

law, unless they include the arbitrary actions and decrees of Courts, can not reach a large per cent of the gravest violations of those prohibitions. It could have not been intended by those who drafted the United States Constitution that the arbitrary actions of Courts, in determining testimony or law, are not subject to these prohibitions, while the actions of legislative bodies are subject to same.

A review of the testimony in these cases by this Honorable Court will be sufficient to convince it that the decision of the Court of Appeal of Louisiana amounts to an edict, in no manner supported by the law and the evidence, and is contrary thereto. It will reveal that the question of negligence, which had to be decided to determine liability, was not discussed; and that the evidence and law relating to such negligence were not discussed. It will be seen that plaintiff Page, who was riding as an invited guest and did nothing contributing to the accident, was denied recovery without any determination of the issues involved in his case.

Respectfully submitted,

JULIUS T. LONG,

Attorney for Petitioners.

P. O. Address,
Shreveport, La.